D57221886

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

RONALD MELTON
3568 Boot Jack Corner
Williamsburg, Ohio 45176

and

CLARA POLAND
8885 Vans Tavern Road
Gainesville, Georgia 30506

and

DEBBIE MCCULLOM
2445 32nd Avenue North
St. Petersburg, Florida 33713

and

SUE GOODMAN
4445 Indian Trace Road
Alexandria, Kentucky 41001

and

CHESTER MELTON
8885 Vans Tavern Road
Gainesville, Georgia 30506

and

CLAYTON MELTON
175 Thompson Street
Alforeda, Georgia 30004

and

CASE NO. A0309610

JUDGE

COMPLAINT FOR DAMAGES AND FOR DECLARATORY JUDGMENT

NOTICE ON CONSTITUTIONAL CHALLENGE ON CHAPTER 2744 OF THE OHIO REVISED CODE

ORIG COMP, PARTIES, SUMMONS
(X) CERT MAIL ( ) SHERIFF ( ) WAVE
( ) PROCESS SERVER ( ) NONE
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SECURITY FOR COST ________
DEPOSITED BY 3114
FILING CODE A-790

FILED
2003 DEC 11 P 3:58
CLERK OF COURTS
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BRENDA MARTIN
2209 W. Clifton Ave, #2
Cincinnati, Ohio 45219,

and

TERRY MELTON
10022 Pippin Road
Cincinnati, OH 45231

Plaintiffs

vs.

BOARD OF COUNTY COMMISSIONERS OF
HAMILTON COUNTY, OHIO
SERVE: Mike Allen
Hamilton County Prosecuting Attorney
Suite 4000
230 East Ninth Street
Cincinnati, Ohio 45202

and

TOM NEYER, JR., individually
and as County Commissioner
138 East Court Street
Room 603
Cincinnati, Ohio 45202

and

JOHN S. DOWLIN, individually
and as County Commissioner
138 East Court Street
Room 603
Cincinnati, Ohio 45202

and

TODD PORTUNE, individually
and as County Commissioner
138 East Court Street
Room 603
Cincinnati, Ohio 45202

On Behalf of Hamilton County,
Ohio in their capacity as
Official Representatives
of the County

and

CARL L. PARROTT, JR., M.D., individually
and in his capacity as Coroner
for Hamilton County, Ohio
Hamilton County Coroner
3159 Eden Avenue
Cincinnati, Ohio 45219

and

ROBERT PFALZGRAF, M.D., individually
and in his capacity as Deputy Coroner
for Hamilton County, Ohio
Hamilton County Coroner
3159 Eden Avenue
Cincinnati, Ohio 45219

and

JONATHAN TOBIAS, M.D., individually
and in his capacity as Deputy Coroner
for Hamilton County, Ohio
934 Mound Street
Cincinnati, Ohio 45203-1520

and

THOMAS CONDON
118 E. McMillan, Apt. 14
Cincinnati, Ohio 45219
also serve at:
Thomas Condon Photography
2245 Gilbert Avenue, Suite 301
Cincinnati, Ohio 45206

Defendants

PRELIMINARY STATEMENT

1. Plaintiffs bring this action for damages for negligent, careless, reckless, malicious, willful, wanton, and intentional actions or omissions of Defendants individually and collectively arising out of photographs taken of the body of Perry Melton, deceased, for commercial purposes while his body was in the care, custody and control of the Hamilton County Coroner, all without due process of law and in violation of the equal protection provided by law as well as state common law tort claims against Defendants individually and collectively for injuries and damages suffered as a result of the aforesaid conduct of Defendants., individually and collectively.

2. Plaintiff Ronald Melton is a resident of Cincinnati, Hamilton County, Ohio. He is a surviving brother and next of kin to Perry Melton, deceased, and is the Administrator of the Estate of Perry Melton, Deceased, pursuant to appointment by the Hamilton County Court of Common Pleas, Probate Division, Hamilton County, Ohio, Case No.: 2001002257.

3. Plaintiff Clara Poland is a resident of Gainesville, Georgia. Plaintiff Clara Poland is a surviving sister and next of kin to Perry Melton, deceased.

4. Plaintiff Debbie McCullom is a resident of St. Petersburg, Florida and a citizen of the United States. Plaintiff Debbie McCullom is a surviving sister and next of kin to Perry Melton, deceased.

5. Plaintiff Sue Goodman is a resident of Alexandria, Kentucky. Plaintiff Sue Goodman is a surviving sister and next of kin to Perry Melton, deceased.

6. Plaintiff Chester Melton is a resident of Gainesville, Georgia and a citizen of the United States. Plaintiff Chester Melton is a surviving brother and next of kin to Perry Melton, deceased.

7. Plaintiff Clayton Melton is a resident of Alforedo, Georgia. Plaintiff Chester Melton is a surviving brother and next of kin to Perry Melton, deceased.

8. Plaintiff Brenda Martin is a resident of Cincinnati, Hamilton County, Ohio. Plaintiff Brenda Martin is a surviving sister and next of kin to Perry Melton, deceased.

9. Plaintiff Terry Melton is a resident of Cincinnati, Hamilton County, Ohio. Plaintiff Terry Melton is a surviving brother and next of kin to Perry Melton, deceased.

10. Defendant Hamilton County, Ohio is a political entity, operating by and through Defendant Hamilton County Board of County Commissioners, which is responsible inter alia, for creating, supervising and maintaining the Hamilton County Coroner's Office and Morgue.

11. Defendant Thomas Neyer, at all times relevant herein, was and is a Hamilton County Commissioner (hereinafter referred to as the "Defendant Commissioners") and, as a matter of law, is a duly authorized official representative of Hamilton County, Ohio.

12. Defendant John S. Dowlin, at all times relevant herein, was and is a Hamilton County Commissioner (hereinafter referred to as the "Defendant Commissioners") and, as a matter of law, is a duly authorized official representative of Hamilton County, Ohio.

13. Defendant Todd Portune, at all times relevant herein, was and is a Hamilton County Commissioner (hereinafter referred to as the "Defendant Commissioners") and, as a matter of law, is a duly authorized official representative of Hamilton County, Ohio.

14. Defendants Thomas Neyer, John Dowlin and Todd Portune are and were, at all times relevant to the allegations herein, County Commissioners for Hamilton County, Ohio comprising Defendant Board of County Commissioners of Hamilton County, Ohio and in their official capacities, are ultimately responsible for the policies, customs, practices, and procedures of all county offices, including the Hamilton County Coroner's Office and Morgue. They are statutorily responsible under R.C. Chapters 305, 307 and 313 to direct and control the operation of the Coroner's Office and Morgue of Hamilton County, Ohio including but not limited to the operations relating to the care, custody, privacy, safe-keeping, and manner of handling of the bodies of deceased individuals, including the body of Perry Melton, deceased.

15. Defendant Carl L. Parrott, Jr., M.D. (hereinafter referred to as "Defendant Parrott") was, at all times relevant herein, a resident of Hamilton County, Ohio and is employed by Hamilton County, Ohio as the elected Hamilton County, Ohio Coroner.

16. At all times relevant herein, Defendant Parrott was the Coroner for Hamilton County, Ohio and was responsible for his employees, agents, servants, and/or staff of the Hamilton County, Ohio Office and Morgue over whom he had supervisory control.

17. Defendant Robert Pfalzgraf, M.D. (hereinafter referred to as "Defendant Pfalzgraf") was, at all times relevant herein, a resident of Hamilton County, Ohio and a Hamilton County Deputy Coroner and pathologist employed by Hamilton County, Ohio, and was responsible for the employees, agents, servants and/or staff, including but not limited to Defendant Jonathan Tobias, M.D. of the Hamilton County, Ohio Office and Morgue over whom he had supervisory control.

18. Defendant Jonathan Tobias (hereinafter referred to as "Defendant Tobias") was, at all times relevant herein, a resident of Hamilton County, Ohio and a Hamilton County Deputy Coroner and pathologist employed by Hamilton County, Ohio, and was responsible for the employees, agents, servants and/or staff of the Hamilton County, Ohio Office and Morgue over whom he had supervisory control.

19. Defendant Thomas Condon (hereinafter referred to as "Defendant Condon") was, at all times relevant herein, a resident of Hamilton County, Ohio. At all times relevant herein, Defendant Condon was an invitee and/or agent and/or contractee of Defendant Board of Commissioners, Defendant Commissioners, Defendant Parrott, Defendant Pfalzgraf, and/or Defendant Tobias with permission of said defendants individually and collectively to be on the premises of the Hamilton County Coroner's Office and Morgue.

COUNT ONE

20. Plaintiffs reallege each and every allegation contained in Paragraphs One through Nineteen herein as if fully restated.

21. On or about November 9, 2000, Perry Melton was killed while in the course and scope of his employment with Specialty Transportation Services, Inc.

22. Following said incident, on or about November 9, 2000, and at all times relevant herein, the body of Perry Melton was entrusted to the care and custody of Hamilton County, Ohio through its county morgue.

23. At all times relevant herein, Plaintiffs had a property right in decedent Perry Melton's remains and have a legal right to recover damages for deprivation of their respective property rights without due process and in violation as well as for severe emotional distress caused the wrongful acts and/or omissions of Defendants, individually and collectively.

24. While in the care and custody of Hamilton County, Ohio, Defendant Condon negligently and/or carelessly and/or recklessly and/or maliciously, and/or with willful, wanton, reckless, and conscious disregard for the privacy of the plaintiffs, came into either actual or constructive possession of photographs, and/or otherwise abused and/or violated the corpse of the decedent, Perry Melton, for commercial exploitation and/or other unlawful and unauthorized purposes.

25. As a direct and proximate result of said act and/or omissions, Plaintiffs suffered the injuries and damages as more fully set forth below.

26. As a direct and proximate result of the foregoing described wrongful conduct of Defendant Condon, Plaintiffs have sustained severe emotional distress, their privacy has been violated, they have been permanently injured, they have and/or will require medical treatment, including but not limited to psychological treatment, into the future and their property rights were "taken" and/or converted without due process of law, in an amount presently undetermined.

COUNT TWO

27. Plaintiffs reallege each and every allegation contained in Paragraphs One Through Twenty-Six, inclusive, herein as if fully restated.

28. At all times relevant herein, Defendant Parrott, as the Hamilton County Coroner, was responsible for the maintenance, security, and operation of the Hamilton County, Ohio Coroner's Office and Morgue. In addition thereto, Defendant Parrott's duties and responsibilities included, but were not limited to, the care and custody of the Decedent, Perry Melton's body and the privacy of his next of kin.

29. While the body of Perry Melton, deceased, in the care and custody of the Hamilton County Morgue, Defendant Parrott negligently, and/or carelessly, and/or recklessly, and/or maliciously, and/or with willful, wanton, reckless, and conscious disregard for the rights of Plaintiffs, committed one or more of the following acts and/or omissions:

a) Improperly granted Defendant Tobias access to unauthorized photographic equipment for purposes not in the course and scope of the specified duties of Defendant Tobias, improperly granted permission to Defendant Tobias to access to the photographic development equipment at the studio and office of Defendant Condon, and/or improperly granted an opportunity to photograph the corpse of Perry Melton and develop the photograph(s) and retain same without authority and otherwise unlawfully;

b) Violated the privacy of Perry Melton's next of kin by providing photographs of the decedent to unauthorized person(s) and/or permitting Defendant Tobias to otherwise photograph and or/pose the corpse of Perry Melton, to touch and/or pose and or photograph the body of Perry Melton;

c) Failed to maintain proper records of those persons authorized to enter and remain about the premises of the Hamilton County Morgue;

d) Failed to maintain control and possession of the Hamilton County Morgue property and records, including but not limited to photographs of the body of Perry Melton, deceased;

e) Failed to maintain proper security of the Hamilton County Morgue as well as its official files;

f) Improperly disclosed nonpublic medical information about Perry Melton, deceased, without proper authorization;

g) Abused the corpse of Perry Melton, deceased;

h) Aided and abetted in the abuse of the corpse of Perry Melton, deceased;

i) Authorized and/or ratified and/or participated in the acts and/or omissions of Defendant Pfalzgraf and/or Defendant Tobias and/or Defendant Condon.

j) Failed to obtain the consent of the surviving next of kin for the acts and/or omissions of Defendants.

30. Said negligent, wrongful, reckless, and/or malicious conduct was performed within the course and scope of his employment and/or official responsibilities.

31. Said wrongful conduct was undertaken with malicious purpose in bad faith and/or in reckless, willful, wanton and conscious disregard of the rights and privacy of the decedent's survivors and next of kin.

32. Said wrongful conduct amounts to a "taking" and conversion of Plaintiffs' property rights, without due process of law and in violation of the equal protection of law.

33. Plaintiffs were entitled to a pre-deprivation process under the due process clause of the Ohio Constitution.

34. The failure of Defendants to provide such due process to Plaintiffs violated their due process rights.

35. Defendant Parrott was in a position of responsibility to supervise the Hamilton County, Ohio Coroner's Office and Morgue and those employees subordinate to him and those persons entering it, including but not limited to Defendants Pfalzgraf, Tobias, and/or Condon.

36. Defendant Parrott had the responsibility and capacity to prevent the wrongful conduct of Defendants Pfalzgraf, Tobias, and/or Condon, and to take action to prevent such conduct.

37. Said acts and/or failures to act were proprietary in nature and fall within the exceptions for governmental immunity as set forth in Ohio Revised Code §2744.03, et seq.

38. As a direct and proximate result of said wrongful conduct, Plaintiffs have suffered injuries and damages as more fully set forth herein.

COUNT THREE

39. Plaintiffs reallege each and every allegation contained in Paragraphs One through Thirty-Eight, inclusive, as if fully restated herein.

40. At all times relevant herein, Defendant Pfalzgraf was a Deputy County Coroner and/or pathologist whose responsibilities included, among other things, the care and custody of the decedent, Perry Melton's body, and the privacy of the next of kin, and the direct supervision of Defendant Tobias.

41. While the body of Perry Melton, deceased, was in the care and custody of the Hamilton County Morgue, Defendant Pfalzgraf negligently, and/or carelessly, and/or recklessly, and/or maliciously, and/or with willful, wanton, reckless and conscious disregard for the rights of the plaintiffs, committed one or more of the following acts and/or omissions:

a) Improperly granted Defendant Tobias access to unauthorized photographic equipment for purposes not in the course and scope of the specified duties of Defendant Tobias, improperly granted permission to Defendant Tobias to access the photographic development equipment at the studio and office of Defendant Condon, and/or improperly granted an opportunity to photograph the corpse of Perry Melton and develop the photograph(s) and retain same without authority and otherwise unlawfully;

b) Violated the privacy of Perry Melton's next of kin by providing photographs of the decedent to unauthorized person(s) and/or permitting Defendant Tobias to otherwise photograph and or/pose the corpse of Perry Melton, to touch and/or pose and/or photograph the body of Perry Melton;

c) Failed to maintain proper records of those persons authorized to enter and remain about the premises of the Hamilton County Morgue;

d) Failed to maintain control and possession of Morgue property and records, including but not limited to photographs of the body of Perry Melton, deceased;

e) Failed to maintain proper security of the Hamilton County Morgue as well as its official files;

f) Improperly disclosed nonpublic medical information concerning Perry Melton, deceased, without proper authorization;

g) Abused the corpse of Perry Melton, deceased;

h) Aided and abetted in the abuse of the corpse of Perry Melton, deceased;

i) Authorized and/or ratified and/or participated in the acts and/or omissions of Defendant Parrott and/or Defendant Tobias and/or Defendant Condon.

j) Failed to obtain the consent of the surviving next of kin for the acts and/or omissions of Defendants.

42. Said negligent, wrongful, reckless, and/or malicious conduct was performed within the course and scope of his employment and/or official responsibilities.

43. Said wrongful conduct was undertaken with malicious purpose in bad faith and/or in reckless, willful, wanton and conscious disregard of the rights and privacy of the decedent's survivors and next of kin.

44. Said wrongful conduct amounts to a "taking" and conversion of Plaintiffs' property rights, without due process of law and in violation of the equal protection of law.

45. Plaintiffs were entitled to a pre-deprivation process under the due process clause of the Ohio Constitution.

46. The failure of Defendants to provide such process to Plaintiffs violated their due process rights.

47. Defendant Pfalzgraf was in a position of responsibility to supervise the Hamilton County, Ohio Coroner's Office and Morgue and those employees subordinate to him and those persons entering it, including but not limited to Defendants Parrott, Tobias, and/or Condon.

48. Defendant Pfalzgraf had the responsibility and capacity to prevent the wrongful conduct of Defendants Parrott, Tobias, and/or Condon and to take action to prevent such conduct.

49. Said acts and/or failures to act were proprietary in nature and fall within the exceptions for governmental immunity as set forth in Ohio Revised Code §2744.03, et seq.

50. As a direct and proximate result of said wrongful conduct, Plaintiffs have suffered injuries and damages as more fully set forth herein.

COUNT FOUR

51. Plaintiffs reallege each and every allegation contained in Paragraphs One through Fifty, inclusive, as if fully restated herein.

52. At all times relevant herein, Defendant Tobias was a Deputy County Coroner and/or pathologist whose responsibilities included, among other things, the care and custody of the body of Perry Melton, deceased, and the privacy of the next of kin.

53. While in the care and custody of the Hamilton County Morgue, Defendant Tobias negligently, and/or carelessly, and/or recklessly, and/or maliciously, and/or with willful, wanton, reckless and conscious disregard for the rights of Plaintiffs, committed one or more of the following acts and/or omissions:

a) Improperly and without authorization and in violation of his duties, improperly took and removed photographs and/or negatives of the decedent Perry Melton from the premises of the Hamilton County Coroner's Office to the studio and/or offices of Defendant Thomas Condon

b) Granted Defendant Condon access to images of the body of Perry Melton and/or the official file, including but not limited to photographs, of the body of Perry Melton, deceased;

c) Violated the privacy of Perry Melton's next of kin by removing negatives and/or photographs of the decedent from the premises of the Hamilton County Coroner's office in violation of his duties for purposes not within his official statutory duties.

d) Failed to maintain proper records of those persons authorized to enter and remain about the premises of the Hamilton County Morgue;

e) Failed to maintain control and possession of Morgue property and records, including but not limited to photographic equipment and/or photographs of the body of Perry Melton, deceased;

f) Failed to maintain proper security of the Hamilton County Morgue and its official files;

g) Improperly disclosed nonpublic medical information concerning the decedent without proper authorization;

h) Abused the corpse of the decedent;

i) Aided and abetted in the abuse of the corpse of the decedent;

j) Authorized and/or ratified and/or participated in the acts and/or omissions of Defendant Parrott and/or Defendant Pfalzgraf and/or Defendant Condon.

k) Failed to obtain the consent of the surviving next of kin for the acts and/or omissions of Defendants.

54. Said negligent, wrongful, reckless, and/or malicious conduct was performed within the course and scope of his employment and/or official responsibilities.

55. Said wrongful conduct was undertaken with malicious purpose in bad faith and/or in reckless, willful, wanton and conscious disregard of the rights and privacy of the decedent's survivors and next of kin.

56. Said wrongful conduct amounts to a "taking" and conversion of Plaintiffs' property rights, without due process of law and in violation of the equal protection of the laws.

57. Plaintiffs were entitled to a pre-deprivation process under the due process clause of the Fourteenth Amendment.

58. The failure of Defendants to provide such process to Plaintiffs violated their due process rights.

59. Defendant Tobias was in a position of responsibility to supervise the Hamilton County, Ohio Coroner's Office and Morgue and those employees subordinate to him and those persons entering it, including but not limited to Defendants Parrott, Pfalzgraf, Condon.

60. Defendant Tobias had the responsibility and capacity to prevent the wrongful conduct of Defendants Parrott, Pfalzgraf, and/or Condon, and to take action to prevent such conduct.

62. Said acts and/or failures to act were proprietary in nature and fall within the exceptions for governmental immunity as set forth in Ohio Revised Code §2744.03, et seq.

63. As a direct and proximate result of said wrongful conduct, Plaintiffs have suffered injuries and damages as more fully set forth herein.

COUNT FIVE

64. Plaintiffs reallege each and every allegation contained in Paragraphs One through Sixty-Three inclusive, as if fully restated herein.

65. At all times relevant herein, Defendants Parrott, Pfalzgraf, Tobias, Condon, were employees, servants, agents, and/or contractees of Defendant Commissioners in their official capacity as Commissioners of Hamilton County, Ohio.

66. Defendant Commissioners were in a position of responsibility for hiring and/or supervising the employees, servants, agents, and/or contractees of Defendant Hamilton County, Ohio, including Defendants Parrott, Pfalzgraf, Tobias, Condon.

67. Defendant Commissioners were in a position to take action to prevent the aforesaid wrongful conduct of Defendants Parrott, Pfalzgraf, Tobias, Condon but failed to do so.

68. Defendant Commissioners authorized and/or ratified and/or participated in the aforesaid wrongful conduct of Defendants Parrott, Pfalzgraf, Tobias, Condon.

69. Defendant Commissioners, both in their individual capacity and in their official capacity on behalf of Defendant Hamilton County, Ohio under the doctrine of *respondeat superior*, are jointly and severally liable as a matter of law for the aforesaid wrongful conduct and the acts and/or omissions of its employees, servants, agents and/or contractees Defendants Parrott, Pfalzgraf, Tobias and Condon.

70. Defendant Commissioners, jointly and severally, and both in their individual capacity and in their official capacity on behalf of Defendant Hamilton County, Ohio negligently, and/or carelessly, and/or recklessly, and/or maliciously, and/or with willful, wanton, reckless and conscious disregard for the rights of the plaintiffs, committed one or more of the following acts and/or omissions:

a) Improperly granted Defendant Tobias access to unauthorized photographic equipment for purposes not in the course and scope of the specified duties of Defendant Tobias, improperly granted permission to Defendant Tobias to access the photographic development equipment at the studio and office and/or studio of Defendant Condon, and/or improperly granted an opportunity to photograph the corpse of Perry Melton and develop the photograph(s) and retain same without authority and otherwise unlawfully;

b) Violated the privacy of Perry Melton's next of kin by providing photographs of the decedent to unauthorized person(s) and/or permitting Defendant Tobias to otherwise photograph and or/pose the corpse of Perry Melton, to touch and/or pose and/or photograph the body of Perry Melton;

c) Failed to maintain proper records of those persons authorized to enter and remain about the premises of the Hamilton County Morgue;

d) Failed to maintain control and possession of the Hamilton County Morgue property and records, including but not limited to photographs of the body of Perry Melton, deceased;

e) Failed to maintain proper security of the Hamilton County Morgue as well as its official files;

f) Improperly disclosed nonpublic medical information about Perry Melton, deceased without proper authorization;

g) Abused the corpse of Perry Melton, deceased;

h) Aided and abetted in teh abuse of the corpse of Perry Melton, deceased.

i) Authorized and/or ratified and/or participated in the acts and/or omissions of Defendant Parrott and/or Defendant Pfalzgraf and/or Defendant Tobias and/or Defendant Condon.

j) Failed to obtain the consent of the surviving next of kin for the acts and/or omissions of Defendants.

71. As a direct and proximate result of said defendants' wrongful acts and/or omissions, plaintiffs suffered losses and damages as more particularly described herein.

COUNT SIX

72. Plaintiffs reallege each and every allegation contained in Paragraphs One through Seventy-One as if fully restated herein.

73. The aforesaid wrongful acts and/or omissions of Defendants Commissioners, Parrott, Pfalzgraf, Tobias and Condon, violated the relevant statutes of the Ohio Revised Code including but not limited to R.C. §2744.02(B)(2) and/or 2744.02(B)(4) and/or 313.10, thereby constituting negligence *per se*.

74. Defendant Hamilton County, Ohio through Defendant Commissioners, failed to provide pre-deprivation process under the due process clause of the Ohio Constitution.

75. Said failure by Defendant Hamilton County, Ohio through Defendant Commissioners, violated the due process rights of the plaintiffs and amounted to, among other things a "taking" and conversion of Plaintiffs' rights and property.

76. As a direct and proximate result thereof, Plaintiffs have sustained the injuries and damages as set forth herein.

COUNT SEVEN

77. Plaintiffs reallege each and every allegation contained in Paragraphs One through Seventy-Six inclusive, as if fully restated herein.

78. The aforesaid wrongful acts and omissions of all of Defendants, jointly and severally, were negligent, and/or careless, and/or reckless, and/or malicious, and/or with willful, wanton, reckless, and conscious disregard for the privacy of the plaintiffs and constituted a "taking" and/or conversion of the property rights of the plaintiffs with due process of law and in violation of the equal protection of the losses.

79. As a direct and proximate result thereof, Plaintiffs sustained the injuries and damages as set forth herein.

COUNT EIGHT

80. Plaintiffs reallege each and every allegation contained in Paragraphs One through Seventy-Nine, inclusive, as if fully restated herein.

81. The aforesaid wrongful acts and/or omissions of all of Defendants, jointly and severally, were negligent, and/or careless, and/or reckless, and/or malicious, and/or with willful, wanton, reckless, and conscious disregard for the privacy of the plaintiffs. By negligently and/or carelessly and/or recklessly and/or maliciously and/or with willful, wanton, reckless, and conscious disregard of the privacy of Plaintiffs and the property rights of Plaintiffs, and by intentionally permitting the body and/or photographs of the body of the decedent to be used by Defendant Tobias and/or Condon for such offensive and grotesque purposes, Defendants knew and/or should have known such wrongful actions and omissions giving rise to a conversion of their respective rights would result in serious emotional distress to Plaintiffs. Said actions rise to the level of intentional and/or negligent infliction of severe emotional distress.

82. As a direct and proximate result thereof, Plaintiffs suffered the injuries and damages as set forth herein.

COUNT NINE

83. Plaintiffs reallege each and every allegation contained in Paragraphs One through Eighty-Two, inclusive, as if fully restated herein.

84. The wrongful conduct of Defendants, jointly and severally, was intentional, reckless, willful, wanton, malicious, and with a conscious disregard for the privacy rights of the decedent's next of kin, Plaintiffs herein.

85. Said conduct entitles the decedent's next of kin and survivors, Plaintiffs herein, to an award of punitive damages against Defendants, jointly and severally, to punish defendants' wrongful conduct and to discourage such future behavior.

COUNT TEN

86. Plaintiffs reallege each and every allegation contained in Paragraphs One through Eighty-Five, inclusive, as if fully restated herein.

87. Section 16, Article I of the Constitution of the State of Ohio established the right to bring law suits against the State.

88. In 1985, the General Assembly of the State of Ohio enacted R.C. §2744 to exempt the political subdivisions from liability for losses resulting from the exercise of "governmental" functions while exposing political subdivisions to liability for negligent exercise of "proprietary" functions.

89. R.C. §2744 is unconstitutional and violates Section 16, Article I of the Constitution of Ohio and is thus unenforceable.

90. Neither the Defendants nor the County have available to them the defense of immunity under Ohio Revised Code § 2744.

WHEREFORE, Plaintiff Ronald Melton, demands judgment against Defendants Hamilton County Ohio, Tom Neyer, Jr., John S. Dowlin, Todd Portune, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Jonathan Tobias, M.D., and Thomas Condon, both jointly and severally, in an amount in excess of $50,000.00 compensatory damages and in an amount in excess of $150,000.00 for punitive damages, plus costs, attorney fees and any and all other relief this Court deems just and equitable.

FURTHER, Plaintiff Clara Poland demands judgment against Defendants Hamilton County Ohio, Tom Neyer, Jr., John S. Dowlin, Todd Portune, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Jonathan Tobias, M.D., and Thomas Condon, both jointly and severally, in an amount in excess of

$50,000.00 compensatory damages and in an amount in excess of $150,000.00 for punitive damages, plus costs, attorney fees and any and all other relief this Court deems just and equitable.

FURTHER, Plaintiff Debbie McCullom demands judgment against Defendants Hamilton County Ohio, Tom Neyer, Jr., John S. Dowlin, Todd Portune, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Jonathan Tobias, M.D. and Thomas Condon, both jointly and severally, in an amount in excess of $50,000.00 compensatory damages and in an amount in excess of $150,000.00 for punitive damages, plus costs, attorney fees and any and all other relief this Court deems just and equitable.

FURTHER, Plaintiff Sue Goodman demands judgment against Defendants Hamilton County Ohio, Tom Neyer, Jr., John S. Dowlin, Todd Portune, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Jonathan Tobias, M.D. and Thomas Condon, both jointly and severally, in an amount in excess of $50,000.00 compensatory damages and in an amount in excess of $150,000.00 for punitive damages, plus costs, attorney fees and any and all other relief this Court deems just and equitable.

FURTHER, Plaintiff Chester Melton demands judgment against Defendants Hamilton County Ohio, Tom Neyer, Jr., John S. Dowlin, Todd Portune, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Jonathan Tobias, M.D. and Thomas Condon, both jointly and severally, in an amount in excess of $50,000.00 compensatory damages and in an amount in excess of $150,000.00 for punitive damages, plus costs, attorney fees and any and all other relief this Court deems just and equitable.

FURTHER, Plaintiff Clayton Melton demands judgment against Defendants Hamilton County Ohio, Tom Neyer, Jr., John S. Dowlin, Todd Portune, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Jonathan Tobias, M.D. and Thomas Condon, both jointly and severally, in an amount in excess of $50,000.00 compensatory damages and in an amount in excess of $150,000.00 for punitive damages, plus costs, attorney fees and any and all other relief this Court deems just and equitable.

FURTHER, Plaintiff Brenda Martin demands judgment against Defendants Hamilton County Ohio, Tom Neyer, Jr., John S. Dowlin, Todd Portune, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Jonathan Tobias, M.D. and Thomas Condon, both jointly and severally, in an amount in excess of

$50,000.00 compensatory damages and in an amount in excess of $150,000.00 for punitive damages, plus costs, attorney fees and any and all other relief this Court deems just and equitable.

FURTHER, Plaintiff Terry Melton demands judgment against Defendants Hamilton County Ohio, Tom Neyer, Jr., John S. Dowlin, Todd Portune, Carl L. Parrott, Jr., M.D., Robert Pfalzgraf, M.D., Jonathan Tobias, M.D. and Thomas Condon, both jointly and severally, in an amount in excess of $50,000.00 compensatory damages and in an amount in excess of $150,000.00 for punitive damages, plus costs, attorney fees and any and all other relief this Court deems just and equitable.

FURTHER, Plaintiffs respectfully request that this court declare Ohio Revised §2744 to be unconstitutional and violative of Section 16, Article I of the Constitution of Ohio.

Respectfully submitted,

David W. Kapor 0031114
Trial Counsel for Plaintiffs
36 E. 7th Street, Suite 1520
Cincinnati, Ohio 45202-4461
513/721-2820

Michael B. Ganson 0015944
Co-Trial Counsel for Plaintiffs
36 E. 7th Street, Suite 1540
Cincinnati, Ohio 45202
513/721-2220

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Second Amended Complaint for Damages has been served upon the following at their last known addresses by ordinary United States mail this 11th day of December, 2003.

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